

STATE OF MICHIGAN
COURT OF APPEALS

In re REPP/DIXSON, Minors.

UNPUBLISHED
April 14, 2016

No. 329191
Macomb Circuit Court
Family Division
LC Nos. 2012-000162-NA;
2012-000163-NA;
2012-000164-NA;
2012-000358-NA

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2012-000358-NA

Before: O'CONNELL, P.J., AND MARKEY AND O'BRIEN, JJ.

PER CURIAM.

In these consolidated appeals, respondent mother and respondent father each appeal by right the trial court's order terminating their parental rights to the minor children. In Docket No. 329191, respondent mother appeals the termination of her parental rights to AR, KD, MD, and DD, pursuant to MCL 712A.19b(3)(c)(i), (g), and (j). In Docket No. 329194, respondent father appeals the termination of his parental rights to KD, MD, and DD, under MCL 712A.19b(3)(c)(i), (g), (h), and (j). We affirm.

Both respondents argue that the trial court erred in finding the existence of a statutory ground for termination under MCL 712A.19b(3), and in finding that termination of their parental rights was in the children's best interests. We disagree.

I. STANDARD OF REVIEW

The petitioner bears the burden of proving a statutory ground for termination by clear and convincing evidence. MCL 712A.19b(3); *In re Trejo*, 462 Mich 341, 355; 612 NW2d 407 (2000). Once the petitioner has proven a statutory ground, the circuit court must order

termination if “termination of parental rights is in the child’s best interests.” MCL 712A.19b(5). This Court reviews for clear error a circuit court’s decision to terminate parental rights. MCR 3.977(K). The clear error standard controls this Court’s review of “both the court’s decision that a ground for termination has been proven by clear and convincing evidence and . . . the court’s decision regarding the child’s best interest.” *In re Trejo*, 462 Mich at 356-357. A decision qualifies as clearly erroneous when, “although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been made.” *In re JK*, 468 Mich 202, 209-210; 661 NW2d 216 (2003). Clear error signifies a decision that strikes this Court as more than just maybe or probably wrong. *In re Trejo*, 462 Mich at 356. We “give deference to the trial court’s special opportunity to judge the credibility of the witnesses.” *In re HRC*, 286 Mich App 444, 459; 781 NW2d 105 (2009).

II. STATUTORY GROUNDS FOR TERMINATION

A. SECTION 19b(3)(c)(i)

A circuit court may order termination of parental rights under MCL 712A.19b(3)(c)(i) if the record clearly and convincingly establishes the following:

The parent was a respondent in a proceeding brought under this chapter, 182 or more days have elapsed since the issuance of an initial dispositional order, and the court, by clear and convincing evidence, finds . . . :

The conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child’s age.

Approximately three years had elapsed between the circuit court’s entry of an initial dispositional order and the end of the termination hearing. In May 2012, respondents admitted the allegations in an April 2012 petition, which detailed the extensive history of domestic violence that respondent father had inflicted on respondent mother, respondent mother’s repeated failures to pursue prosecution of respondent father for the assaults, the occurrence of a 2008 child protective proceeding after substantiated allegations of physical neglect of AR, and respondents’ lack of employment and housing. The circuit court ordered that respondents complete parenting classes, attend psychological evaluations, complete domestic violence programs, attend family and individual therapy, obtain and maintain appropriate income and housing, and attend supervised parenting times with the children. The circuit court also ordered respondent father to complete an anger management program.¹

Clear and convincing evidence demonstrated that the conditions leading to the children’s May 2012 adjudication continued to exist in August 2015, with no reasonable likelihood of their rectification within a reasonable time. Respondents completed parenting classes, and at least periodically regularly attended supervised parenting times with the children. But respondent

¹ The same conditions existed when the circuit court exercised jurisdiction over DD.

mother failed to exhibit that she had benefited from the parenting class. Multiple witnesses agreed that as the child protective proceeding progressed, respondent mother exhibited more difficulty managing and supervising the children. Within an hour after the two-hour parenting times began, KD regularly screamed, yelled, fled the parenting time room, and tried to hit his siblings. Respondent mother often did not respond to KD, ignored suggestions for addressing his bad behaviors, and deferred to a foster parent or caseworker to handle KD. MD occasionally mimicked KD's bad behaviors, respondent mother sometimes tried managing MD, and also sometimes gave MD to a foster parent or caseworker.

The concerns regarding domestic violence and the children's physical safety also still existed at the time of the termination hearing. Respondent mother had ignored repeated referrals for individual therapy focused on domestic violence, and failed to attend family counseling. A caseworker opined that respondent mother had not demonstrated improvement in her parenting skills, insight into the primary and longstanding domestic violence concerns, and the children remained at risk of harm in her care.

Respondent father attended supervised parenting times only until his imprisonment in May 2013, although petitioner reported no complaints about his parenting of the children. The concerns involving domestic violence still existed during the termination hearing because, although respondent father completed some counseling and education on these topics, he minimized at the termination hearing the violence he inflicted on respondent mother.

And no reasonable likelihood existed that respondents might improve their parenting skills within a reasonable time. A decision regarding a reasonable time for improvement focuses not just on how long it would take a respondent to improve parenting skills, but also on how long the children could wait for improvement to occur. *In re Dahms*, 187 Mich App 644, 648; 468 NW2d 315 (1991). Three of the children had languished for approximately three years as temporary court wards; DD had resided in foster care for his entire life, and they all urgently needed permanency and stability. All of the children had special needs; the three oldest children had significant mental and emotional issues, including anxiety and post-traumatic stress disorder (PTSD), that were managed with medications and frequent counseling, and DD had substantial physical special needs relating to his epileptic seizures.

In summary, respondent father had no interaction with the children after his incarceration in May 2013, was imprisoned until at least March 2017, and demonstrated minimal benefit from his anger management and domestic violence prevention. Respondent mother achieved no progress in the area of primary concern, the long history of domestic violence she had endured. She also demonstrated little progress in improving her parenting skills. The record clearly and convincingly demonstrates the unlikelihood that respondents might demonstrably improve their parenting skills within a reasonable time considering the children's ages. See *In re LE*, 278 Mich App 1, 28; 747 NW2d 883 (2008).

Lastly, with respect to respondents' suggestion that they should be afforded additional time to pursue the goals of their treatment plans while Altisha Dixon, respondent father's aunt, helped care for the children, the record clearly and convincingly established Dixon's failure to satisfy foster care licensing requirements. Dixon had three children of her own; she did not

have a relationship with the minor children, and she had failed to remedy many physical licensing requirements that affected safety in her home.

B. SECTION 19b(3)(g)

Pursuant to MCL 712A.19b(3)(g), a circuit court can terminate a respondent's parental rights "if the court finds, by clear and convincing evidence," that "[t]he parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age." Contrary to respondents' contentions, abundant evidence established their failures to properly care for, protect, and supervise the children, and the unlikelihood that they might improve their parenting skills within a reasonable time. *In re Moss*, 301 Mich App 76, 81; 836 NW2d 182 (2013).

Clear and convincing evidence showed that respondents had improperly parented the children. In May 2012, respondents admitted the allegations in the April 2012 petition, which involved the extensive history of domestic violence that respondent father inflicted on respondent mother, respondent mother's repeated failures to pursue prosecution of respondent father for the assaults, the occurrence of a 2008 child protective proceeding after substantiated allegations of physical neglect of AR, and respondents' lack of employment and housing.

Clear and convincing evidence also showed that respondents were not reasonably likely to be able to provide proper care and custody within a reasonable time in light of the children's ages. MCL 712A.19b(3)(g); *In re LE*, 278 Mich App at 28; *In re Dahms*, 187 Mich App at 648. The circuit court ordered that respondents complete parenting classes, attend psychological evaluations, complete domestic violence programs, attend family and individual therapy, obtain and maintain appropriate income and housing, and attend supervised parenting times with the children. The circuit court also ordered respondent father to complete an anger management program.

Respondent mother failed to exhibit that she had benefited from her parenting class. Specifically, multiple witnesses agreed that as the child protective proceeding progressed, respondent mother exhibited more difficulty managing and supervising the children. Respondents also failed to demonstrate progress regarding the long history of domestic violence, or the resultant concern for the children's physical safety. Respondent mother ignored repeated referrals for individual therapy focused on domestic violence, and failed to attend family counseling. A caseworker opined that respondent mother had not demonstrated improvement in her parenting skills, insight into the primary and longstanding domestic violence concerns, and the children remained at risk of harm in her care.

Respondent father attended supervised parenting times only until his incarceration in May 2013, although petitioner reported no complaints about his parenting of the children. The concerns involving domestic violence still existed during the termination hearing because, although respondent father completed some counseling and education on these topics, he minimized at the termination hearing the violence he inflicted on respondent mother.

No reasonable likelihood existed that respondents might improve their parenting skills within a reasonable time, especially given the significant special needs of all the children. Three of the children had languished for approximately three years as temporary court wards; DD had resided in foster care his entire life, and they all urgently needed permanency and stability. All of the children had special needs; the three oldest children had significant mental and emotional issues, including anxiety and PTSD, that were managed with medications and frequent counseling, and DD had substantial physical special needs relating to his epileptic seizures. Respondent father had no interaction with the children after his imprisonment on May 30, 2013, was imprisoned until at least March 30, 2017, and demonstrated minimal benefit from his anger management and domestic violence prevention. Respondent mother achieved no progress in the area of primary concern, the long history of domestic violence she had endured. She also demonstrated little progress in improving her parenting skills.

C. SECTION 19b(3)(h)

Pursuant to MCL 712A.19b(3)(h), a circuit court may terminate parental rights if clear and convincing evidence establishes the following:

The parent is imprisoned for such a period that the child will be deprived of a normal home for a period exceeding 2 years, and the parent has not provided for the child's proper care and custody, and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age.

In *In re Mason*, 486 Mich 142, 161; 782 NW2d 747 (2010), our Supreme Court explained:

The combination of the first two criteria—that a parent's imprisonment deprives a child of a normal home for more than two years *and* the parent has not provided for proper care and custody—permits a parent to provide for a child's care and custody *although the parent is in prison*; he need not *personally* care for the child. The third necessary condition is forward-looking; it asks whether a parent "will be able to" provide proper care and custody within a reasonable time. Thus, a parent's past failure to provide care because of his incarceration also is not decisive. [Emphasis in original.]

The undisputed facts reveal that respondent father's imprisonment deprived the children "of a normal home for more than two years." MCL 712A.19b(3)(h). In May 2013, respondent father was incarcerated after his arrest for assault with intent to do great bodily harm. In September 2013, he was sentenced to a prison term of 57 to 120 months.

Clear and convincing evidence established that during his incarceration, respondent father did not provide for the children's appropriate care and custody. When asked about his plans to care for the children, respondent father replied only vaguely that he had given respondent mother money to go toward caring for the children. Concerning respondent father's suggestion that his aunt could help care for the children, the record clearly and convincingly established the aunt's failure to satisfy foster care licensing requirements. The aunt also had

three children of her own, she did not have a relationship with the minor children, and she had failed to remedy many physical licensing requirements that affected the safety of her house.

Furthermore, clear and convincing evidence established that respondent father was not reasonably likely to be able to provide the children with proper care and custody within a reasonable time. The concerns involving his domestic violence still existed at the termination hearing because, although respondent father completed some counseling and education on these topics, he minimized at the termination hearing the violence he inflicted on respondent mother.

D. SECTION 19b(3)(j)

A circuit court also can terminate parental rights if evidence clearly and convincingly establishes that “[t]here is a reasonable likelihood, based on the conduct or capacity of the child’s parent, that the child will be harmed if he or she is returned to the home of the parent.” MCL 712A.19b(3)(j). The record clearly and convincingly shows that for three years, respondents failed to seriously address the domestic violence that long plagued their relationship. Respondent mother made almost no effort to pursue the services designed to enlighten her regarding domestic violence and its effect on the children. Respondent father had many arrests for assaultive crimes. Pursuant to the parties’ no contest pleas, he frequently inflicted domestic violence against respondent mother. And his testimony at the termination hearing attempted to minimize his violent actions.

The record also clearly and convincingly proved that the three oldest children had significant emotional and behavioral special needs resulting from their exposure to respondents’ relationship. *In re Hudson*, 294 Mich App 261, 268; 817 NW2d 115 (2011) (explaining that the risk of harm to children includes both potential emotional and physical harm).

III. BEST INTERESTS

Both respondents contest the circuit court’s best interests ruling under MCL 712A.19b(5). “Even if the trial court finds that the [petitioner] has established a ground for termination by clear and convincing evidence, it cannot terminate the parent’s parental rights unless it also finds by a preponderance of the evidence that termination is in the best interests of the children.” *In re Gonzales/Martinez*, 310 Mich App 426, 434; 871 NW2d 868 (2015). This Court has stated regarding making a best-interests determination:

The trial court should weigh all the evidence available to determine the children’s best interests. To determine whether termination of parental rights is in a child’s best interests, the court should consider a wide variety of factors that may include the child’s bond to the parent, the parent’s parenting ability, the child’s need for permanency, stability and finality, and the advantages of a foster home over the parent’s home. The trial court may also consider a parent’s history of domestic violence, the parent’s compliance with his or her case service plan, the parent’s visitation history with the child, the children’s well-being while in care, and the possibility of adoption. [*In re White*, 303 Mich App 701, 713-714; 846 NW2d 61 (2014)(quotation marks and citations omitted).]

The trial court accepted that respondents loved the children, and the children shared at least some level of bonding with them. But respondents lacked parenting abilities, in light of their lengthy history of CPS involvement, respondent mother's difficulties parenting the children at the supervised parenting times, and respondent father's failure to demonstrate benefit from his anger management and domestic violence programs. The oldest three children had lived in foster care for three years in this proceeding, and the youngest child had spent his entire life in foster care. All of the children had strong needs for finality, permanency, and stability. All four children's special needs had improved in the care of their foster parents, who expressed willingness to adopt them. The circuit court committed no clear error in finding that termination of respondents' parental rights served the children's best interests.

Finally, the circuit court carefully considered, and correctly rejected, respondents' suggestion that the court place the children with respondent father's aunt, Altisha Dixson, and deny the petition to terminate their parental rights. The record clearly and convincingly established Dixson's failure to satisfy foster care licensing requirements. Dixson had three children of her own, did not have a relationship with the minor children, and had failed to remedy many physical licensing requirements that affected the safety of her house.

We affirm.

/s/ Peter D. O'Connell
/s/ Jane E. Markey
/s/ Colleen A. O'Brien